Filed 8/23/18 P. v. Salinas CA5

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

MICHAEL SALINAS,

Defendant and Appellant.

F074468

(Fresno Super. Ct. No. F16903812)

OPINION

APPEAL from a judgment of the Superior Court of Fresno County. Dennis A. Peterson, Judge.

Julia J. Spikes, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Carlos A. Martinez and Catherine Tennant Nieto, Deputy Attorneys General, for Plaintiff and Respondent.

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INTRODUCTION

Appellant/defendant Michael Salinas pleaded guilty to one count of felony vandalism. The court imposed a jail term, followed by mandatory supervised release subject to certain conditions. He did not object to any of the conditions.

On appeal, defendant argues some conditions of his mandatory supervised release are unreasonable and constitutionally invalid, and his attorney's failure to object at the sentencing hearing constituted ineffective assistance. We affirm.

FACTS[1]

At approximately 7:09 a.m. on June 14, 2016, officers from the Fresno Police Department were dispatched to the Guitar Center, a business located on Blackstone Avenue, regarding a report that someone broke a glass window.

Upon arrival, an officer found defendant pacing in front of the business. Defendant walked away but was confronted by another officer, who observed something in defendant's hand. Defendant approached the second officer and dropped an item on the ground. The officer drew his weapon and ordered defendant to stop and get on the ground. Defendant complied. The officers recovered three black metal struts from the ground.

Defendant was taken into custody without incident. He said, "It's just a misdemeanor, give me my ticket so I can get out of here." Defendant refused to provide his name and again said, "It's a misdemeanor vandalism, give me my ticket."

The officers advised defendant that his identity would be determined by fingerprints, and his failure to provide his name would result in an additional charge. Defendant then identified himself.

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[1] Given defendant's plea, the following background facts are taken from the police report, as summarized in the probation report.

An employee of Guitar Center reported that he was inside the store and saw defendant standing outside and heard him yelling. The employee heard something hit the front door. He then heard something else hit the door and the sound of shattered glass. The employee saw defendant standing in front of the broken glass door and holding a metal object.

The front glass door was shattered with damage estimated at $1,000. A black metal strut was found inside the store, and it was similar to the three struts defendant dropped when he saw the police.

PROCEDURAL HISTORY

On June 16, 2016, a complaint was filed that charged defendant with felony vandalism with the amount of damage being over $400 (Pen. Code[2], § 594, subd. (a)).

It was further alleged defendant had five prior prison term enhancements, based on the following convictions in Fresno County:

(1) unlawfully taking or driving a vehicle (Veh. Code, § 10851, subd. (a)); and burglary (§ 459) in December 2007;

(2) driving in willful disregard for the safety of others while fleeing from a pursuing officer (Veh. Code, § 2800.2, subd. (a)); and deterring an officer by threats or violence (§ 69) in December 2009;

(3) forgery (§ 470, subd. (d)) and petty theft with a prior conviction (§ 666) in 2014;

(4) passing forged checks (§ 496d, subd. (a)) in July 2014; and

(5) possession of a dirk or dagger (§ 21310) in July 2015.

Plea

On August 8, 2016, prior to a preliminary hearing, defendant pleaded no contest to felony vandalism and admitted the five prior prison term enhancements. Defendant

[2] All further statutory citations are to the Penal Code unless otherwise indicated.

signed a plea agreement that stated there was a factual basis pursuant to *People v. West* (1970) 3 Cal.3d 595.

On August 26, 2016, defendant filed a motion for the court to exercise its discretion and treat his conviction as a misdemeanor. Defendant's motion stated the parties stipulated to the police reports for the factual basis for the plea. Defendant argued that based on the police reports, the court should reduce the felony vandalism conviction to a misdemeanor and place him on probation because there was a minimal amount of damage to the store, defendant's alleged criminality was "decreasing," and he intended to make full restitution.

Defendant submitted a letter in support of the motion and stated he had "done enough time over this window," and asked for the conviction to be reduced to a misdemeanor so he could stay focused on his family.

Defendant's prior record[3]

According to the probation report, defendant (born 1986) was identified as a "transient." Defendant stated he was a self-employed studio musician, and he had previously "volunteered" as a music producer at Guitar Center. In a letter to the court, defendant said he was a musician and producer, and taking classes to become a recording arts and audio engineer.

Also, according to the probation report, defendant had multiple juvenile dispositions for felony receiving stolen property (§ 496, subd. (a)); misdemeanor theft of personal property; misdemeanor battery of a cohabitant (§ 243, subd. (e)(1)), and failing to obey the juvenile court's orders.

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[3] As we explain below, defendant did not object to the court's sentencing order but raises several fact-based arguments about the validity of some of the conditions imposed for his mandatory supervised release. We refer to the probation report for a general outline of defendant's circumstances and what might have been addressed at the sentencing hearing, if defendant had objected.

Defendant's adult record began in 2005. As noted above, he had multiple felony convictions and admitted he served five prior prison terms as part of his plea. Defendant also had 11 violations of probation and three violations of parole.

In addition, defendant had convictions for misdemeanor resisting arrest (§ 148, subd. (a)(1)); theft (§ 484, subd. (a)); felony possession of a stolen vehicle, with a prior theft conviction (§ 496d, subd. (a)); and misdemeanor possession of a controlled substance (Health & Saf. Code, § 11377, subd. (a)).

The probation report stated that one of defendant's prior convictions was based on stealing a digital music sequencer from Guitar Center in 2013. In discussing the 2013 incident, the probation report stated that defendant went to the store on a regular basis, and the employees were familiar with him. When he was apprehended for the 2013 incident, defendant admitted taking the item and asked to work for the store to buy the device.

Probation report recommendations

The probation report stated: "The defendant's criminal history began in 2000. He has had opportunities to rehabilitate as a juvenile and adult, with probation services, local commitments, prison commitments, and parole; however, he continues to reoffend. In weighing factors of mitigation and aggravation, great weight was placed on his early plea."

The probation report recommended a split sentence of jail, followed by mandatory supervised release under several conditions set forth in the report. These conditions included the following:

> "Submit person and property, including *financial records*, vehicles, computers, *handheld electronic and cellular devices*, and place of abode/known residences to search and seizure at any time of the day or night by probation officers or any other law enforcement officer, with or without a search warrant, or other process. [¶] … [¶]

"You shall not use, possess or have under your custody or control any narcotics, controlled substances, or narcotic paraphernalia without a valid prescription. *You must abstain from the use of marijuana*[.] Do not knowingly associate with those who use or possess any narcotics or controlled substances. Submit to drug testing. Do not possess any tampering device, which would alter or effect the administration or results of the drug test. [¶] … [¶]

"Enroll, participate and successfully complete an alcohol and/or drug treatment and after care portion as directed by the Probation Officer or the Court and sign waivers of confidentiality. Report immediately to Probation if you leave the program prior to completion. [¶] … [¶]

"*Stay away from Guitar Center store(s) within the County of Fresno for the period of probation.*"[4] (Italics added.)

Sentencing hearing

On September 19, 2016, the court heard and denied defendant's motion to reduce the conviction to a misdemeanor.

The court reviewed defendant's prior convictions and prison record, and noted that in 2013, defendant was sentenced to two years in prison for stealing a music sequencer from Guitar Center.

The court sentenced defendant to the lower term of 16 months for felony vandalism, plus two consecutive one-year terms for two prior prison term enhancements. The court ordered the other three prior prison term enhancements stricken.

Defendant's aggregate sentence was three years four months. The court imposed a split sentence, and ordered defendant to serve one year eight months in jail.

The court placed defendant on mandatory supervised release for one year eight months subject to certain conditions as previously set forth in the probation report, including the following:

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[4] As we discuss in issue II, *post*, defendant contends the italicized conditions are invalid. However, defense counsel never objected to any of the conditions, even though they were set forth in the probation report's recommendations.

"Defendant is ordered to obey all laws and lawful directives of his probation officer. [¶] … [¶]

"You're ordered to submit your person, property, *financial records*, vehicles, *computers, electronic devices and cellular devices* as well as your residence to search and seizure at any time of the day or night by any law enforcement officer or probation officer with or without a search warrant. [¶] … [¶]

"You're not to use, possess or have in your custody or control any narcotics, controlled substances or narcotics paraphernalia *without a valid prescription.*

"You're ordered to *abstain from the use of marijuana* and not to associate with those who use or possess narcotics or controlled substances. [¶] … [¶]

"You're ordered to *stay away from Guitar Centers* in Fresno County during your supervision." (Italics added.)

The court also ordered defendant to submit to drug testing, enroll and successfully complete an alcohol or drug treatment program as directed by the probation officer, and not to be in a gang or associate with known gang members.

Defendant did not object to any of the court's conditions.

DISCUSSION

I. Mandatory Supervised Release

Defendant contends the following court-ordered conditions for his mandatory supervised release are unreasonable and unconstitutional:

(1) The search conditions, particularly for his financial records and electronic and cellular devices;

(2) The order to abstain from the use of marijuana; and

(3) The order to stay away from Guitar Center stores.

We will begin by reviewing the court's ability to impose conditions on mandatory supervised release, and then address defendant's challenges to these conditions.

A. Imposition of Conditions

"[T]he Legislature has decided a county jail commitment followed by mandatory supervision imposed under section 1170, subdivision (h), is akin to a state prison commitment; it is not a grant of probation or a conditional sentence." (*People v. Fandinola* (2013) 221 Cal.App.4th 1415, 1422; *People v. Martinez* (2014) 226 Cal.App.4th 759, 762–763 (*Martinez*).)

"Therefore … 'mandatory supervision is more similar to parole than probation.' [Citation.] We will therefore analyze the validity of the terms of supervised release under standards analogous to the conditions or parallel to those applied to terms of parole." (*Martinez, supra,* 226 Cal.App.4th at pp. 763; *People v. Relkin* (2016) 6 Cal.App.5th 1188, 1193–1194 (*Relkin*).)

" 'In California, parolee status carries distinct disadvantages when compared to the situation of the law-abiding citizen. Even when released from actual confinement, a parolee is still constructively a prisoner subject to correctional authorities. [Citations.] The United States Supreme Court has characterized parole as "an established variation on imprisonment" and a parolee as possessing "not … the absolute liberty to which every citizen is entitled, but only … the conditional liberty properly dependent on observance of special parole restrictions." [Citations.] Our own Supreme Court holds a like opinion: "Although a parolee is no longer confined in prison his custody status is one which requires … restrictions which may not be imposed on members of the public generally." [Citations.]' [Citation.]" (*Martinez, supra,* 226 Cal.App.4th at p. 763; *In re Stevens* (2004) 119 Cal.App.4th 1228, 1233–1234.)

"The fundamental goals of parole are ' "to help individuals reintegrate into society as constructive individuals" [citation], " 'to end criminal careers through the rehabilitation of those convicted of crime' " [citation] and to [help them] become self-supporting.' [Citation.] In furtherance of these goals, '[t]he state may impose any condition reasonably related to parole supervision.' [Citation.] These conditions 'must

be reasonably related to the compelling state interest of fostering a law-abiding lifestyle in the parolee.' [Citation.]" (*Martinez, supra,* 226 Cal.App.4th at p. 763.)

B. The Reasonableness of Conditions

"The validity and reasonableness of parole conditions are analyzed under the same standard as that developed for probation conditions. [Citations.]" (*Martinez, supra,* 226 Cal.App.4th at p. 764.) The probationary standards also have been used to evaluate the reasonableness of conditions imposed by the court for mandatory supervised release. (*Martinez, supra,* 226 Cal.App.4th at p. 764; *Relkin*, *supra*, 6 Cal.App.5th at p. 1194.)

"[T]he types of conditions a court may impose on a probationer are not unlimited. We first recognized the limits on probation conditions in the seminal case of *People v. Lent* (1975) 15 Cal.3d 481 … (*Lent*). 'Generally, "[a] condition of probation will not be held invalid unless it '(1) has no relationship to the crime of which the offender was convicted, (2) relates to conduct which is not in itself criminal, and (3) requires or forbids conduct which is not reasonably related to future criminality ….' [Citation.]" [Citation.] This test is conjunctive – all three prongs must be satisfied before a reviewing court will invalidate a probation term. [Citations.] As such, even if a condition of probation has no relationship to the crime of which a defendant was convicted and involves conduct that is not itself criminal, the condition is valid as long as the condition is reasonably related to preventing future criminality.' [Citations.]" (*People v. Moran* (2016) 1 Cal.5th 398, 405, fn. omitted (*Moran*); see also *Martinez*, *supra,* 226 Cal.App.4th at p. 764; *Relkin*, *supra,* 6 Cal.App.5th at p. 1193.)

"In general, the courts are given broad discretion in fashioning terms of supervised release, in order to foster the reformation and rehabilitation of the offender, while protecting public safety. [Citations.] Thus, the imposition of a particular condition … is subject to review for abuse of that discretion. 'As with any exercise of discretion, the court violates this standard when it imposes a condition … that is arbitrary, capricious or

exceeds the bounds of reason under the circumstances. [Citation.]' [Citation.]" (*Martinez, supra*, 226 Cal.App.4th at p. 764; *Relkin*, *supra*, 6 Cal.App.5th at p. 1194.)

C. Constitutional Standards

A condition imposed for mandatory supervised release may also be challenged as unconstitutionally vague or overbroad. Such challenges are also evaluated under the standards used to review the constitutional validity of probation conditions. (*Relkin*, *supra*, 6 Cal.App.5th at p. 1194.)

"A probation condition 'must be sufficiently precise for the probationer to know what is required of him, and for the court to determine whether the condition has been violated,' if it is to withstand a challenge on the ground of vagueness. [Citation.] A probation condition that imposes limitations on a person's constitutional rights must closely tailor those limitations to the purpose of the condition to avoid being invalidated as unconstitutionally overbroad. [Citation.]" (*In re Sheena K.* (2007) 40 Cal.4th 875, 890; *Relkin*, *supra*, 6 Cal.App.5th at p. 1194.)

"The essential question in an overbreadth challenge is the closeness of the fit between the legitimate purpose of the restriction and the burden it imposes on the defendant's constitutional rights – bearing in mind, of course, that perfection in such matters is impossible, and that practical necessity will justify some infringement." (*In re E.O.* (2010) 188 Cal.App.4th 1149, 1153; *People v. Pirali* (2013) 217 Cal.App.4th 1341, 1346.)

II. Forfeiture

As a preliminary matter, the People assert that defendant has forfeited appellate review of the conditions imposed for his mandatory supervised release because he failed to object to any of the conditions when the court imposed them at the sentencing hearing.

The forfeiture determination is again reviewed based on the standards for probation conditions. (*Relkin, supra*, 6 Cal.App.5th at p. 1195.) "In general, the failure to make a timely objection to a probation condition forfeits the claim of error on appeal.

[Citations.] 'A timely objection allows the court to modify or delete an allegedly unreasonable condition or to explain why it is necessary in the particular case. The parties must, of course, be given a reasonable opportunity to present any relevant argument and evidence.' [Citation.] An objection may be raised for the first time on appeal only where it concerns an unauthorized sentence involving pure questions of law. [Citations.]" (*Id.* at pp. 1194–1195; *People v. Welch* (1993) 5 Cal.4th 228, 237.)

A constitutional challenge is not forfeited if it raises a facial challenge, i.e., "a challenge to a term of probation on the ground of unconstitutional vagueness or overbreadth that is capable of correction without reference to the particular sentencing record developed in the trial court can be said to present a pure question of law." (*Sheena K.*, *supra*, 40 Cal.4th at p. 887.) "Although a probation condition may be overbroad when considered in light of all the facts, only those constitutional challenges presenting a pure question of law may be raised for the first time on appeal. [Citation.] [N]ot all constitutional defects in conditions of probation may be raised for the first time on appeal; some questions cannot be resolved without reference to the particular sentencing record developed in the trial court. [Citation.]" (*People v. Pirali*, *supra*, 217 Cal.App.4th at p. 1347.)

Defendant states that defense counsel did not object at the sentencing hearing to the electronic search conditions because they were not stated in the probation report. As set forth above, however, the probation report recommended search conditions to include "handheld electronic and cellular devices" and "financial records." The probation report also recommended orders to abstaining from the use of marijuana and to stay away from Guitar Center stores. Defense counsel did not object to any of these recommendations or the court's orders subsequent orders.

Defendant next argues his failure to object to the challenged conditions does not forfeit his claim because they present pure questions of law turning on undisputed facts both as to reasonableness and constitutionality of the conditions, without reference to any

factual findings in the record. However, the entirety of defendant's arguments focus on how the various conditions are invalid based on his current felony conviction, his prior record, or his future criminality, as to both the reasonableness and constitutionality of the conditions. As we explain below, defendant's contentions are fact-specific to the nature and circumstances of his criminal conduct, and are not purely facial challenges.

In the alternative, defendant asserts defense counsel was prejudicially ineffective for failing to object to the court's imposition of the conditions for his mandatory supervised release, and that failure was prejudicial because the conditions are unreasonable and unconstitutional.

"In order to demonstrate ineffective assistance, a defendant must first show counsel's performance was deficient because the representation fell below an objective standard of reasonableness under prevailing professional norms. [Citation.] Second, he must show prejudice flowing from counsel's performance or lack thereof. Prejudice is shown when there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome. [Citation.]" (*People v. Williams* (1997) 16 Cal.4th 153, 214–215.)

"[D]eciding whether to object is inherently tactical, and the failure to object will rarely establish ineffective assistance. [Citation.]" (*People v. Hillhouse* (2002) 27 Cal.4th 469, 502.) "An attorney may well have a reasonable tactical reason for declining to object, and ' "[i]f the record on appeal sheds no light on why counsel acted or failed to act in the manner challenged, an appellate claim of ineffective assistance of counsel must be rejected unless counsel was asked for an explanation and failed to provide one, or there simply could be no satisfactory explanation." ' [Citation.]" (*People v. Seumanu* (2015) 61 Cal.4th 1293, 1312–1313.)

In addition, the failure to raise a meritless objection is not ineffective assistance of counsel. (*People v. Bradley* (2012) 208 Cal.App.4th 64, 90.)

We thus turn to defendant's claims of error based on his ineffective assistance arguments and the limited record before this court. While the lack of timely objections prevented the court from making an appropriate record, the record still contains sufficient information about defendant to suggest the reasons for these conditions and defense counsel's failure to object.

III. Order to Stay Away from Guitar Center

We begin with the court's order for defendant "to stay away from Guitar Centers in Fresno County during your supervision." Defendant contends the order is constitutionally vague because it did not include any distance, time, or purpose requirements.

Similar stay-away orders have been imposed as probation conditions. In *People v. Contreras* (2015) 237 Cal.App.4th 868 (*Contreras*), the defendant was placed on probation for theft-related offenses and ordered to stay away from a certain Kohl's store. While on probation for those offenses, he committed additional thefts at department stores. The court then ordered the defendant to stay away from all Kohl's stores and other mall stores as new conditions of probation. (*Id.* at pp. 875–877.)

Contreras held the condition to stay away from all Kohl's stores was reasonable under *Lent, supra*, 15 Cal.3d 481:

> "The Kohl's condition is related to the crime for which defendant was convicted in the felony burglary case (second degree burglary of a Sears store for the purpose of committing theft). Although the conviction offense involved a different retail establishment, this was defendant's fourth commercial burglary (Sears twice, Macy's once, and Kohl's once). Although entering a Kohl's store is not conduct that is in itself criminal, forbidding defendant from entering all Kohl's stores is reasonably related to his future criminality. Shoplifting and second degree burglary are intimately related to the retail function of both Kohl's and Sears, and prohibiting defendant from entering both stores was related to his future criminality because it would prevent him from victimizing these businesses further. This condition would also prevent defendant from stealing goods from one Kohl's store and then attempting to return them to another Kohl's

> store for cash, or applying information he learned about security at one Kohl's location to another Kohl's store. Since the Kohl's condition is valid under two prongs of the *Lent* test, we conclude the condition was reasonable and the court did not abuse its discretion when it ordered defendant to stay out of all Kohl's stores." (*Contreras, supra,* 237 Cal.App.4th at p. 881.)

Contreras also held the condition was constitutional, it was not overbroad, it was narrowly drawn, and it did not burden the defendant's "right to travel." (*Contreras, supra,* 237 Cal.App.4th at pp. 882–883.) "The primary objective of the Kohl's condition is to protect Kohl's from future theft, not to impede defendant's travel." (*Id*. at p. 883.) The condition to stay away from all Kohl's stores was "sufficiently narrowly drawn to protect one of the victims of defendant's repeated burglaries and to promote defendant's rehabilitation." (*Ibid*.)

Contreras rejected defendant's argument that the Kohl's condition was vague because he was not " 'notified in advance of what shopping centers and locations he must avoid because Kohl's store are located on the premises.' " (*Contreras, supra,* 237 Cal.App.4th at p. 884.) "The Kohl's condition directs defendant to stay out of all Kohl's store. Given the signage on modern retails establishments, we fail to see how one could unknowingly enter a Kohl's store." (*Ibid*.)

In *Moran, supra,* 1 Cal.5th 398, the defendant pleaded no contest to second degree burglary after he took items from a Home Depot store, left without paying, and admitted he was going to resell the items. As a condition of probation, he was ordered not to " 'go on the premises, parking lot adjacent or any store of Home Depot in the State of California.' " The defendant did not object to the condition at trial, but argued on appeal the condition was unreasonable and unconstitutional. (*Id*. at pp. 401–402.)

Moran held the condition was "reasonably related to his crime" under *Lent.* (*Moran, supra,* 1 Cal.5th at p. 404.)

> "Because defendant stole from a Home Depot store, the condition that he stay away from all such stores is reasonably related to his crime. He was

> not, after all, prohibited from entering all retail establishments nor even all home improvement, hardware, or big box stores. The condition simply prevented him from entering the stores (and adjacent parking lots) of the company he victimized. As the test is one of reasonableness and deference to the trial court's exercise of discretion, we find sufficient grounds to uphold the trial court's choice in this regard." (*Ibid*.)

Moran also found that "prohibiting defendant from entering Home Depot stores is reasonably directed at curbing his future criminality by preventing him from returning to the scene of his past transgression and thus helping him avoid any temptation of repeating his socially undesirable behavior. (*Moran*, *supra*, 1 Cal.5th at p. 404.)

Moran rejected the defendant's claim that the condition was overbroad because his crime was committed at the San Jose store, but he was prohibited from entering any of the over 200 Home Depot stores in California. "[T]hat defendant's crime was confined to a single Home Depot store in San Jose and not the entire chain of stores does not fatally undermine the trial court's exercise of discretion in imposing a more wide-ranging stay-away condition, for conditions of probation aimed at rehabilitating the offender need not be so strictly tied to the offender's precise crime." (*Moran*, *supra*, 1 Cal.5th at pp. 404–405.) The conditions "wide scope recognizes the possibility that defendant specifically targeted Home Depot because of a common feature of the company's stores, such as their layout, the difficulty in monitoring such a large facility, the easy access to multiple exits, companywide security methods or practices, or some other factor that influenced defendant to choose Home Depot as his victim rather than some other retail establishment." (*Id*. at p. 405.)

Moran further held the Home Depot condition was constitutional, it was not overbroad, and it did not violate the defendant's right to travel. (*Moran*, *supra*, 1 Cal.5th at pp. 405–406.) "Imposing a limitation on probationers' movements as a condition of probation is common, as probation officers' awareness of probationers' whereabouts facilitates supervision and rehabilitation and helps ensure probationers are complying with the terms of their conditional release. [Citations.]" (*Id*. at p. 406.)

A. Analysis

According to the probation report, defendant was identified as a "transient," but he claimed to be a self-employed musician who had "volunteered" as a music producer at Guitar Center. The store's employees reported defendant went to the store on a regular basis, and they were familiar with him. One of defendant's prior convictions was based on his theft of digital music device from Guitar Center in 2013.

While defendant was convicted of felony vandalism in this case, the stay-away condition is reasonably related to his crime since he committed the instant offense by smashing the glass door of the Guitar Center store at 7:00 a.m. It is reasonable to infer that by breaking the glass on the door, he intended to enter the business to engage in further criminal activity. He was known to frequent the establishment and had committed a prior theft offense at that same business. As in *Contreras* and *Moran*, the condition is also related to his future criminality because it prevents him from victimizing this same business again.

Defendant's constitutional claim likewise lacks merit. While defendant argues that the stay-away condition is vague without distance, time or purpose requirements, the condition was sufficiently narrowly drawn to protect one of the victims of defendant's repeated offenses and promote defendant's rehabilitation. Defendant was ordered to stay away from Guitar Center stores in order to prevent him from committing further offenses against that establishment. "Given the signage on modern retails establishments," the condition was sufficiently precise. (*Contreras*, *supra*, 237 Cal.App.4th at p. 884.) We assume the probation condition will not be arbitrarily applied or enforced. (*In re Sheena K.*, *supra*, 40 Cal.4th at p. 890.)

Defense counsel was not prejudicially ineffective for failing to object to this condition.

IV. Validity of General Search Conditions

The court ordered defendant "to submit your person, property, financial records, vehicles, computers, electronic devices and cellular devices as well as your residence to search and seizure at any time of the day or night by any law enforcement officer or probation officer with or without a search warrant."

On appeal, defendant challenges the specific search conditions for his "financial records" and electronic and cellular devices.

In addition to his attacks upon these specific conditions, defendant appears to separately assert the court abused its discretion when it imposed unlimited and warrantless search conditions for his residence, person, property, vehicles, and the other items, at any time of the day or night, because the order did not specify any "particular items to be searched for, and no other particular reason for the search, giving an officer unlimited potential to invade [defendant's] privacy." Defendant argues these search conditions are unreasonable, and constitutionally vague and overbroad.

To the extent defendant challenges the general validity of the court's search conditions, it is well settled such search conditions for parolees are reasonable and constitutional because they deter future criminality and allow for more effective supervision of parolees.

As explained above, a defendant subject to mandatory supervised release is similar to a parolee, and "parolees … have severely diminished expectations of privacy by virtue of their status alone." (*Samson v. California* (2006) 547 U.S. 843, 852; *People v. Schmitz* (2012) 55 Cal.4th 909, 916 (*Schmitz*); *Martinez*, *supra*, 226 Cal.App.4th at p. 763.)

"Under California statutory law, every inmate eligible for release on parole 'is subject to search or seizure by a … parole officer or other peace officer at any time of the day or night, with or without a search warrant or with or without cause.' [Citation.] Upon release, the parolee is notified that '[y]ou and your residence and any property under your control may be searched without a warrant at any time by any agent of the

Department of Corrections [and Rehabilitation] or any law enforcement officer.' [Citations.]" (*Schmitz, supra*, 55 Cal.4th at p. 916.)

"When considering constitutional challenges to warrantless and suspicionless parole searches based on a search condition, courts weigh the privacy interests of the parolee against society's interest in preventing and detecting recidivism." (*Schmitz, supra*, 55 Cal.4th at p. 916.) "[S]uch searches are reasonable, so long as the parolee's status is known to the officer and the search is not arbitrary, capricious, or harassing. [Citations.]" (*Ibid.*)

"A law enforcement officer who is aware that a suspect is on parole and subject to a search condition may act reasonably in conducting a parole search even in the absence of a particularized suspicion of criminal activity, and such a search does not violate any expectation of privacy of the parolee." (*People v. Sanders* (2003) 31 Cal.4th 318, 333.)

As convicted felons, parolees are provided conditional freedom for the specific purpose of monitoring the transition from inmate to free citizen. (*People v. Reyes* (1998) 19 Cal.4th 743, 752.) Additionally, the state has an interest in supervising parolees to protect the public in light of the fact that parolees have higher rates of recidivism and are more likely to commit future criminal offenses. (*Pa. Bd. of Parole v. Scott* (1998) 524 U.S. 357, 365; *People v. Reyes*, *supra*, 19 Cal.4th at p. 752.) "Accordingly, a parolee does not have a legitimate expectation of privacy that would prevent a properly conducted parole search. [Citations.]" (*Schmitz, supra*, 55 Cal.4th at p. 917.)

The general search conditions in this case were not unreasonable or unconstitutional, and defense counsel was not required to raise meritless objections to the conditions.

V. Search Conditions for Electronic Devices and Financial Records

Defendant contends the specific search conditions for electronic and cellular devices,[5] and his financial records, are unreasonable under *Lent* and constitutionally vague and overbroad.

A. Lent

Defendant asserts the search conditions imposed in this case for electronic and cellular devices are invalid under *Lent* because they are not reasonably related to his current conviction for felony vandalism or to the prevention of future criminality. Defendant argues that he did not use any electronic devices to commit the act of vandalism, and he did not have a history of engaging in criminal conduct through the use of an electronic device.

Defendant raises the same arguments about the search condition for financial records, and contends he did not use any financial records to commit the act of vandalism, and he did not have a history of engaging in criminal conduct through financial transactions.

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[5] There are several cases pending before the California Supreme Court regarding the reasonableness and constitutionality of electronic search conditions, and there is a split of authority in those cases regarding the validity of such conditions. (See, e.g., *People v. Trujillo* (2017) 15 Cal.App.5th 574, review granted Nov. 29, 2017, S244650; *In re R.S.* (2017) 11 Cal.App.5th 239, review granted July 26, 2017, S242387; *People v. Bryant* (2017) 10 Cal.App.5th 396, review granted June 28, 2017, S241937; *People v. Nachbar* (2016) 3 Cal.App.5th 1122, review granted Dec. 14, 2016, S238210; *In re J.E.* (2016) 1 Cal.App.5th 795, review granted Oct. 12, 2016, S236628; *In re A.S.* (2016) 245 Cal.App.4th 758, review granted May 25, 2016, S233932; *In re Mark C.* (2016) 244 Cal.App.4th 520, review granted Apr. 13, 2016, S232849; *In re Alejandro R.* (2015) 243 Cal.App.4th 556, review granted Mar. 9, 2016, S232240; *In re Ricardo P.* (2015) 241 Cal.App.4th 676, review granted Feb. 17, 2016, S230923; *In re Patrick F.* (2015) 242 Cal.App.4th 104, review granted Feb. 17, 2016, S231428.)

Pending guidance by the Supreme Court, we find that the electronic search conditions in this case are reasonable and constitutional.

The search conditions for electronic devices and financial records are not related to defendant's conviction for felony vandalism in this case, and the conditions relate to conduct that is not criminal. Therefore, the question is whether the conditions are "reasonably related to future criminality" under the third *Lent* factor. (*Lent, supra,* 15 Cal.3d at p. 486.)

"Generally speaking, conditions of probation 'are meant to assure that the probation serves as a period of genuine rehabilitation and that the community is not harmed by the probationer's being at large. [Citation.] These same goals require and justify the exercise of supervision to assure that the restrictions are in fact observed.' [Citation.] For example, probation conditions authorizing searches 'aid in deterring further offenses ... and in monitoring compliance with the terms of probation. [Citations.] By allowing close supervision of probationers, probation search conditions serve to promote rehabilitation and reduce recidivism while helping to protect the community from potential harm by probationers.' [Citation.] A condition of probation that enables a probation officer to supervise his or her charges effectively is, therefore, 'reasonably related to future criminality.' [Citation.]" (*People v. Olguin* (2008) 45 Cal.4th 375, 380–381 (*Olguin*).)

A warrantless search condition "is intended to ensure that the [probationer] is obeying the fundamental condition of all grants of probation, that is, the usual requirement … that a probationer 'obey all laws.' " (*People v. Balestra* (1999) 76 Cal.App.4th 57, 67.) This is true "even if [the] condition … has no relationship to the crime of which a defendant was convicted …." (*Olguin, supra,* 45 Cal.4th at p. 380.)

The purpose of requiring Fourth Amendment search waivers as a condition of probation and parole is "to determine not only whether [the offender] disobeys the law, but also whether he obeys the law. Information obtained [from an unexpected and unprovoked search] afford[s] a valuable measure of the effectiveness of the supervision given the defendant.…" (*Olguin, supra,* 45 Cal.4th at p. 382.)

While defendant did not use electronic devices or financial records to commit the felony vandalism offense in this case, the absence of such facts does not mean the search conditions were unreasonable as a matter of law. (*Olguin*, *supra*, 45 Cal.4th at pp. 380–381.)

A. Analysis

Defendant failed to object to any of the conditions imposed at the sentencing hearing, thus preventing the court from making a record to address defendant's assertions and his specific circumstances. Nevertheless, the limited record shows the search conditions for electronic devices and financial records are reasonably related to preventing defendant's future criminality. At the time of defendant's conviction in this case, he had multiple felony and misdemeanor convictions for theft and drug offenses. He had convictions for financial offenses of forgery and passing forged checks. He repeatedly violated prior grants of probation and parole.

Defendant also had convictions for driving in willful disregard for the safety of others while fleeing from a pursuing officer, deterring an officer by threats or violence, and resisting arrest. In this case, he refused to identify himself to the officers who responded to Guitar Center until he was advised that they could determine his identify through fingerprints and he would face an additional charge for failing to identify himself.

While the court was not called upon to make specific findings, it adopted the probation report's recommendation for the electronic and financial record search conditions with the awareness of these facts, defendant's record of repeatedly reoffending and, more importantly, his less than cooperative prior contacts with law enforcement. It is reasonable to infer the court's belief that searching defendant's electronic devices would assist law enforcement in determining whether defendant was complying with the conditions imposed for his mandatory supervised release. The court had a reasonable basis to conclude the most effective way to confirm defendant remained law-abiding was

to permit his electronic devices to be examined, rather than relying on a meeting or a telephone conversation.

In addition, defendant had a history of committing financially-related offenses, and the search condition for financial records was reasonable to prevent future offenses.

These Fourth Amendment waivers are not open-ended and only apply during the mandatory supervised release period. If defendant is successful, the Fourth Amendment waivers will terminate and his electronic devices and financial records will again be completely private. The search conditions are therefore reasonably related to future criminality.

In addition, any burden imposed by these search conditions are no more onerous than the standard search conditions for a defendant's person, residence, and vehicles, routinely imposed as a condition of probation, and statutorily required as a condition of parole. (See, e.g., *People v. Ramos* (2004) 34 Cal.4th 494, 505–506; *People v. Middleton* (2005) 131 Cal.App.4th 732, 739.)

B. Constitutional Arguments

Defendant separately argues the electronic and financial records search conditions are unconstitutional because they are vague and overbroad, based on the United States Supreme Court's ruling in *Riley v. California* (2014) 573 U.S. __ [134 S.Ct. 2473] (*Riley*).[6]

In *Riley*, the court held that the search incident to arrest exception to the warrant requirement did not apply to searches of data on a cell phone seized from an arrestee.

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[6] Defendant asserts the court's order was not clear about which "electronics" were subject to search, the order could mean "anything from a computer, to a radio or television," and his criminal behavior was "very low-tech" and did not involve any "electronics" or financial records. As explained above, defendant did not object to any of these conditions at the sentencing hearing, thus preventing the court from addressing his particular circumstances. We are addressing the constitutional validity of the conditions based on defendant's claim of facial challenges and defense counsel's ineffective assistance for failing to object.

(*Riley*, *supra*, 134 S.Ct. at p. 2485.) *Riley* explained the ordinary justifications for searches incident to arrest were to prevent harm to officers and destruction of evidence, but there were "no comparable risks when the search is of digital data." (*Id*. at p. 2485.) "Digital data stored on a cell phone cannot itself be used as a weapon to harm an arresting officer or to effectuate the arrestee's escape. Law enforcement officers remain free to examine the physical aspects of a phone to ensure that it will not be used as a weapon – say, to determine whether there is a razor blade hidden between the phone and its case. Once an officer has secured a phone and eliminated any potential physical threats, however, data on the phone can endanger no one." (*Ibid*.)

Riley contrasted the government's interests with the heightened privacy interests that people have in their cell phone data. *Riley* compared cell phones to "minicomputers," and noted both the volume of sensitive data they contain and the pervasiveness of cell phone usage. (*Riley*, *supra*, 134 S.Ct. at p. 2489.) Cell phone data is "qualitatively different" from physical records and could include information like location data or Internet browsing history, that would "typically expose to the government far *more* than the most exhaustive search of a house." (*Id*. at pp. 2490–2491, italics in original.)

> "Modern cell phones are not just another technological convenience. With all they contain and all they may reveal, they hold for many Americans 'the privacies of life,' [citation]. The fact that technology now allows an individual to carry such information in his hand does not make the information any less worthy of the protection for which the Founders fought. Our answer to the question of what police must do before searching a cell phone seized incident to an arrest is accordingly simple – get a warrant." (*Id.* at pp. 2494–2495.)

Riley reversed and remanded the case, but emphasized that its holding was only that cell phone data is subject to Fourth Amendment protection, "not that the information on a cell phone is immune from search." (*Riley*, *supra*, 134 S.Ct. at p. 2493.) "Even though the search incident to arrest exception does not apply to cell phones, other case-

specific exceptions may still justify a warrantless search of a particular phone," such as the exigent circumstances exception. (*Ibid*.)

In *Carpenter v. United States* (2018) 585 U.S. __ [138 S.Ct. 2206] (*Carpenter*), the police arrested four men who were suspecting of committing several robberies. One of the men provided the police with cell phone numbers for other accomplices. Based on this information, the FBI applied for and obtained court orders under the Stored Communications Act to obtain cell phone records for the suspected accomplices from wireless carriers, that showed location-related data obtained from their cell phones. The orders were issued under the statute and not pursuant to a search warrant. (*Id.* at pp. 2212–2213.)

Carpenter held the orders were invalid because the statute only required the government to show "reasonable grounds" to believe the records were relevant to an ongoing investigation. (*Carpenter*, *supra*, 134 S.Ct. at p. 2212) "[T]his Court has never held that the Government may subpoena third parties for records in which the suspect has a reasonable expectation of privacy." (*Id.* at p. 2221.) "If the choice to proceed by subpoena provided a categorical limitation on Fourth Amendment protection, no type of record would ever be protected by the warrant requirement." (*Id*. at p. 2222.) *Carpenter* rejected the government's arguments that the information was rendered less private because it was part of business records or because, by using the cell phone, the individual had technically disclosed the location information to the wireless carrier. *Carpenter* acknowledged its previous holding in *Riley* and the "unique nature of cell phone location records." (*Carpenter*, *supra*, at p. 2217.) *Carpenter* concluded "that the Government must generally obtain a warrant supported by probable cause before acquiring such records." (*Id*. at p. 2221.)

In *People v. Appleton* (2016) 245 Cal.App.4th 717, the defendant was charged with sex offenses committed on a minor that he met on social media. He later pleaded guilty to false imprisonment by means of deceit and was placed on probation. One of the

probation conditions was for his electronic devices to be subject to " 'forensic analysis search for material prohibited by law.' " (*Id.* at p. 721.) *Appleton* held the search condition was valid under *Lent* because it was reasonably related to his crime. However, it was unconstitutionally overbroad under *Riley* because it allowed "for searches of vast amounts of personal information unrelated to defendant's criminal conduct or his potential future criminality," such as his medical and financial records, "personal diaries, and intimate correspondence with family and friends." (*People v. Appleton*, *supra*, at p. 727.)[7]

In *United States v. Lara* (9th Cir. 2016) 815 F.3d 605, 610, the court held a probation condition for search of "person and property, including any residence, premises, container or vehicle under [his] control" did not include cell phone data.

In *People v. Sandee* (2017) 15 Cal.App.5th 294 (*Sandee*), the defendant was on probation and subject to a search condition for her property and personal effects. An officer stopped the defendant after she left a house that was under surveillance for drug activity. The officer confirmed the search condition, searched her cell phone, and found text messages that were possibly related to drug sales. (*Id.* at pp. 298–299.)

Sandee held that the defendant's suppression motion was properly denied and the officer's search of the cell phone was valid under the probation search condition.

> "[A]t the time the search was conducted a reasonable, objective person would understand it to encompass a search of [defendant's] cell phone. In the probation search condition, [defendant] agreed to submit her 'property' and 'personal effects' to search at any time. The probation search condition is worded very broadly and contains no language whatsoever that would limit the terms 'property' and 'personal effects' to exclude [defendant's] cell phone or other electronic devices and the data stored on them. As a cell phone is indisputably the property of the person who possesses it and constitutes part of his or her personal effects, a reasonable person would understand the terms 'property' and 'personal effects' to include [the

[7] It appears that a petition for review was not filed in *Appleton*.

defendant's] cell phone and the data on it." (*Sandee, supra,* 15 Cal.App.5th at p. 302, fn. omitted.)

Sandee rejected the Ninth Circuit's holding in *Lara* because it "did not follow the approach normally employed by the California Supreme Court in assessing the validity of a search conducted pursuant to a probation search condition, under which the probationer is understood to have consented to all searches within the scope of the probation search condition, as interpreted on an objective basis. [Citation.]" (*Sandee, supra,* 15 Cal.5th at p. 302.) *Sandee* acknowledged *Riley* but concluded there was nothing in *Riley* to suggest that cell phones "should *not* be understood as a *type* of personal property" within the scope of a probation search. (*Sandee, supra,* at p. 302, fn. 5, italics in original.)

C. Analysis

Defendant relies on *Riley* and asserts the search conditions for his electronic devices and financial records are unconstitutional. Neither *Riley* nor *Carpenter* address the constitutionality of search conditions imposed pursuant to parole or supervised release. The defendants in those cases had not been convicted of crimes at the time of the searches, and *Riley* acknowledged that there could be circumstances where a warrantless search of electronic devices would be valid. Neither *Riley* nor *Carpenter* are applicable to defendant's case.

As we have explained, a defendant who has been convicted and sentenced to jail and mandatory supervised release is akin to a parolee, and has a diminished expectation of privacy. (*Samson v. California, supra,* 547 U.S. at p. 850.) The warrant requirement addressed in *Riley* and *Carpenter* is materially different from the overbreadth analysis for the validity of parole conditions.

As relevant to this case, the balancing of equities is fundamentally different than in *Riley* and favors the government, since a defendant has a significantly diminished expectation of privacy as a parolee and the government has a greater interest to protect the safety of the public from future criminal offenses committed by parolees. The

alternative to mandatory supervised release would be confinement in prison or jail, where the defendant would not have access to electronic devices or financial records.

While searches involving electronic devices and financial records may raise unique issues of privacy not found in searches of these more traditional categories, there is no reason to depart from the well-recognized treatment of search conditions when that condition implicates electronic devices. Indeed, a person's home also contains considerable personal and confidential information, and is a place where a person has the absolute right to be left alone, but conditions which grant broad authority to search the home of a probationer or parolee without a warrant or reasonable cause have been upheld. (*People v. Reyes*, *supra*, 19 Cal.4th at pp. 746, 754; *People v. Ramos*, *supra*, 34 Cal.4th at pp. 505–506; *In re Binh L.* (1992) 5 Cal.App.4th 194, 203–205; *People v. Balestra, supra*, 76 Cal.App.5th at pp. 66–68; see also *United States v. Mitchell* (11th Cir. 2009) 565 F.3d 1347, 1351, 1352 [comparing "the hard drive of a computer" to the " 'the digital equivalent of its owner's home, [as] capable of holding a universe of private information' "].)

As in *Sandee*, we find the search conditions are not vague or overbroad. Given defendant's limited expectation of privacy, we find the state's interest in preventing future criminal behavior justified the search conditions imposed in this case, and they are not unconstitutional under *Riley*.

VI. Marijuana Conditions

Defendant also challenges the conditions regarding drug and marijuana use. In addition to obeying all laws, the court ordered defendant "not to use, possess or have in your custody or control any narcotics, controlled substances or narcotics paraphernalia without a valid prescription." The court also ordered him "to abstain from the use of marijuana and not to associate with those who use or possess narcotics or controlled substances." In addition, the court ordered defendant to submit to drug testing, and enroll

and successfully complete an alcohol or drug treatment program as directed by the probation officer.

Defendant did not object to any of these conditions. On appeal, however, he raises reasonableness and constitutional challenges to the marijuana order; we again review his arguments under the claim of ineffective assistance.

A. Lent

Defendant contends the condition that prohibited marijuana use is unreasonable under *Lent, supra,* 15 Cal.3d 481, because there is no evidence he was under the influence of marijuana when he committed the instant offense or that he abused marijuana.

We decline to find defense counsel was prejudicially ineffective for failing to object to this condition because it was reasonably related to preventing his future criminality. Defendant had a prior conviction for possession of a controlled substance, and his string of theft offenses raised the inference of possible drug use. The court also ordered him to submit to drug testing, and attend and complete an alcohol or drug treatment program as directed by the probation officer; defendant has not challenged these conditions, thus conceding their relevance to his situation.

B. Medical Marijuana

Defendant next asserts marijuana order is unreasonable under *Lent, supra,* 15 Cal.3d 481 because defendant might "need it medically while on supervision."

The probation report recommended the marijuana restriction, and defendant had the opportunity to advise the court of any legitimate medical need to use marijuana. The prohibition of a defendant's medical use of marijuana as a condition of probation has been affirmed, even after medical use was made legal in California, if that condition is reasonably related to future criminality. (See, e.g., *People v. Hughes* (2012) 202 Cal.App.4th 1473, 1479–1480; *People v. Brooks* (2010) 182 Cal.App.4th 1348, 1352; *People v. Moret* (2009) 180 Cal.App.4th 839, 853–855.)

We have already found the condition is reasonable based on the limited record before this court. In addition, the record is silent as to any possible claim by defendant of legitimate medical use of marijuana to determine whether that need outweighs the reasonableness of the condition. (See, e.g., *People v. Leal* (2012) 210 Cal.App.4th 829, 840–842.) "The requisite balancing contemplates a judicial assessment of medical need and efficacy based upon evidence: the defendant's medical history, the gravity of his or her ailment, the testimony of experts or otherwise qualified witnesses, conventional credibility assessments, the drawing of inferences, and perhaps even medical opinions at odds with that of the defendant's authorizing physician." (*Id.* at p. 844.) The record is silent as to any of the evidence contemplated by *Leal*.

C. Proposition 64

Defendant argues the marijuana restriction is unreasonable under *Lent* because the record does not support the court's ban of his "legal use of marijuana" given the enactment of Proposition 64, which legalized the "recreational use of marijuana for adults."

In November 2016, the voters of California approved Proposition 64, the Control, Regulate, and Tax Adult Use of Marijuana Act. The act established a comprehensive system to legalize, control, and regulate nonmedical marijuana. (Prop. 64, §§ 1, 3.)

The act added section 11362.1 to the Health and Safety Code. It states that under state and local law, a person who is 21 years or older may possess, transport, purchase, or give away not more than 28.5 grams of marijuana; cultivate a certain number of plants, and smoke or ingest cannabis or cannabis products. (*People v. Onesra Enterprises, Inc.* (2018) 24 Cal.App.5th Supp. 9; Health & Saf. Code, §§ 11358–11359; § 11362.1, et seq.) It also reduced certain marijuana offenses from felonies to misdemeanors, and provides for recall of sentence or dismissal of specific convictions under certain circumstances. (See, e.g., *People v. Rascon* (2017) 10 Cal.App.5th 388, 392–395.)

However, marijuana remains a "controlled substance," a hallucinogen, under Health and Safety Code section 11054, subdivision (d)(13). In addition, federal law still prohibits the use, possession, manufacture and sale of marijuana. (*City of Vallejo v. NCORP4, Inc*. (2017) 15 Cal.App.5th 1078, 1081.)

Defendant's sentencing hearing was held in September 2016, prior to the approval of Proposition 64. Thus, defense counsel could not have raised the objection and defendant cannot be said to have waived the argument. Nevertheless, a court may order conditions of probation or parole that prohibit an otherwise legal activity if the condition bears a relationship to the crime for which the defendant was convicted, or the condition is reasonably related to preventing future criminality. (*Olguin, supra,* 45 Cal.4th at pp. 379–380.) We have already found the condition was reasonable under the limited record herein, and further find the subsequent enactment of Proposition 64 did not render the condition invalid.

D. Constitutional Arguments

Defendant separately argues the court's order for him not to associate with those who use or possess narcotics is unconstitutionally vague because it lacks a knowledge requirement.

In *People v. Hall* (2017) 2 Cal.5th 494 (*Hall*), the defendant argued that a probation condition barring him from possessing firearms or illegal drugs was unconstitutionally vague because it lacked an explicit knowledge requirement, and it did not expressly state that only *knowing* possession of the prohibited items was barred. (*Id*. at p. 497.) *Hall* rejected the argument: "In determining whether the condition is sufficiently definite … a court is not limited to the condition's text" and "must also consider other sources of applicable law [citation], including judicial construction of similar provisions. [Citations.]" (*Id.* at p. 500.)

Hall explained that relevant case law already construed probation conditions involving the possession of firearm and drugs as "prohibiting defendant from *knowingly*

owning, possessing, or having in his custody or control any handgun, rifle, shotgun, firearm, or any weapon that can be concealed on his person" and "proscribing defendant from *knowingly* using, possessing, or having in his custody or control any illegal drugs, narcotics, or narcotics paraphernalia, without a prescription." (*Hall*, *supra*, 2 Cal.5th at p. 503, original italics.) *Hall* concluded that given "this legal backdrop, ... the firearms and narcotics conditions are not unconstitutionally vague." (*Id.* at p. 501.) *Hall* also held that since "no change to the substance of either condition would be wrought by adding the word 'knowingly,' " it declined the defendant's "invitation to modify those conditions simply to make explicit what the law already makes implicit." (*Id*. at p. 503.)

The People rely on *Hall* and contend that a "knowledge" requirement is already implicit in the condition in this case. Defendant acknowledges *Hall* but argues the ruling did not address limitations on his association with other people. As in *Hall*, however, we find a knowledge requirement is already implicit and modifying this clause to make "explicit what the law already makes implicit would serve no purpose." (*Hall*, *supra*, 2 Cal.5th at p. 503.)

DISPOSITION

The judgment is affirmed.

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POOCHIGIAN, J.

WE CONCUR:

_____
HILL, P.J.

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LEVY, J.